come in here. Mr. Hand has remained away. Yes, he is here now. I am glad, because I am going to comment on him. It is my duty to do so. I don't care who the witness is, whether P. H. Hand, whether it is anybody I like or not, a lawyer has a duty to see whether he can reconcile the things they have said with the truth from their viewpoint, and what is the truth in this case. You cannot reach your verdict in this case unless you give application to this thought, I read it in a book the other day, it seemed to express something better than I had ever seen it expressed before that for thousands of years our civilization was retarded because people acted upon the theory that to believe is to understand, and the prosecution has all been based upon the theory that your belief must follow your understanding. So you must understand this case before you reach a verdict. [69]

Now, we have three situations, in reality, as Mr. Sullivan pointed out. You have the situation in 1944. You have the situation when Pineda and Andrade were there. Let me explain what this record has shown. The record comes from the lips of Dr. Mericle, Colonel Hand, Mr. Moncharsh, people who were in that plant. It comes from these documents outside, the purchase orders and the invoices. There is not an informative document in this record that I did not put in myself, not one. Did you ever realize that? All of the witnesses bring in some purchase orders and some invoices. There is not an informative document in evidence here of a physical nature that we have not put in

except, I think, one which the last part—well, they questioned Magee and Johnson, who never participated in any of the transactions out on Townsend Street—here it is, this is the last question to Colonel Foster: I asked him about inspections at the point of origin and inspections at the point of delivery, and Colonel Foster says:

> "He can go in because there are two ways to save the contractor trouble, inspections would be made and were made all the time at the plant and then reinspected at point of delivery."

The entire actions of the Veterinary Corps in the plant of Nye & Nissen were solely for their benefit. It had no relation whatever to the passing of title to the merchandise. In other words, the method of doing business during the period from 1938 right straight through, even over the period of time Mr. Andrade and Mr. Pineda were there, that inspections made by the Veterinary Corps had nothing to do with the acceptance of the goods; nothing whatever. In other words, the Veterinary Corps, as a courtesy to the contractor comes in to your plant and they make an inspection of the merchandise. Suppose we have a shipment for the waterfront or to the Presidio and before a contractor goes to all that trouble and then an inspector rejects it, it is some help to the contractor for someone in the Army to have seen it before it gets there, so the man does not go to all that trouble and expense to fill an order and after filling that order have it turned down. It is only for the benefit of

the contractor. It is obviously for his benefit and human experience shows that it is for his benefit. So why would any human being try to delude himself in selecting the type of merchandise he is going to send out to a place to be inspected in connection with specifications and the contract? It is not right. It is wrong. In other words, it does not make sense. That has been stated under oath in this court. Colonel Foster stated it on oath. Jack Smith has stated it on oath. Mr. Moncharsh and Mr. Goddard stated it on oath.

Now you come to the Department of Agriculture. I think the Government has introduced 195 exhibits and I have not got the time to figure out how many times we went through them. Now, I am not talking about the things that happened in 1944— [71] I might preface this thought for you in this way: Out of the mouths of witnesses whom you have long since forgotten emerged the truth in this case. Do you remember a man named Donald? He was head of the War Shipping. He came here and he testified and he said that in the fall of 1943 they called the egg producers of the Bay area together at a meeting and he testified he informed them that they would from then on have to have Department of Agriculture inspection. He pointed out to them at that meeting—it is in this record—he pointed out to them at that meeting that due to war conditions it made it advantageous for everybody to have inspections in the plant and from then on, I think it was in February or January of 1944, that was the Commencement of inspections at the point of origin

to determine quality and then make the delivery.

Is there a single word in this record, is there a document, a purchase order, a single contract which requires that Department of Agriculture inspectors will inspect at the point of origin to determine the quality of merchandise? No. Business was not done that way. It not only was true of the Army, but it was true of the Department of Agriculture and the Department of Agriculture inspectors for the Navy purchases. Up to the time Mr. Donald called these men together every inspection agency, the Veterinary Corps, Department of Agriculture, the inspection was at the point of delivery.

Now, with that background, which is correct, it cannot be [72] disputed, it is the truth, what do you find in respect to these witnesses, like Andrade and Pineda, particularly Pineda? He sees transferring of eggs from case to case. He sees this egg, he sees that egg, he sees the other egg. He was a candler. He was not close enough to—I am not going to call him a liar because he used the name of Colonel Foster. But let me say this: I actually took the record and started to count and when I had gone through about four pages and I saw that in four pages he used the name Colonel Foster thirty-three times, then I quit counting. He used it hundreds of times. He had conversations with him, he showed him cases of eggs. Well, you saw the Colonel. If you ever saw him in your life you would remember him. You saw Colonel Keelsmeier and the very day he identified Colonel Kielsmeier and said that is not the man, he had that very morning described his transactions

with Colonel Foster; and then you remember that over the weekend they had gone out to Colonel Foster's home and had pointed out the difference between Colonel Foster and Colonel Keelsmeier.

He was a candler in that plant. The length of it, the size of it, is comparable to the length of this building, on the inside, 240 feet long. He was not close enough to really know the difference between the two men, yet after you heard him testify you thought, yes, he was really the right-hand man in the job. Well, he was so remote from the intricacies of the egg business that he didn't know—he didn't know Colonel [73] Foster from Colonel Keelsmeier. He didn't know anything except the things he was told to do. He would take cases of eggs with the stamps on, with no candling, that would be done, he says, and everything that was done was perfectly proper, perfectly right, because they bought the merchandise from a plant belonging to Nye & Nissen. Not one case of eggs that Mr. Pineda ever saw candled in that plant belonged to anybody except the firm of Nye & Nissen, and when they left that plant and were turned over to the Commissary Department, the Post Exchange at the Presidio, those people never took possession of that merchandise until they had examined it, inspected it and determined they would take it. Many, many times, as has been brought out by the defendants and has been brought out by one of the witnesses for the prosecution, merchandise went out there and came back.

Here is what happened. You have gotten it from

the testimony and I would like you to try to visualize it. You jurors have had to leave your other activities on the outside during this trial, which has been an unusual trial because of the unusual things that have occurred. They have occurred from the very outset of the trial when the first juror, I forget which one it was, indicated she had been investigated. Then we find two agents of the Department of Justice in the same room, in the same room here with an Army man. I have never tried a case in my life when they had more than one, but they [74] need two for Nye & Nissen, and they need an Army man in addition. In all my years I never saw the Government ask for more than one man, a government lawyer ask for more than one assistant, but they had to have three in this case; all those unusual instances. On the impanelment of this jury there was only one thing I wished—I don't know any of you—that was to see that this jury was composed of twelve men and women in business, that was because I know you are not going to be persuaded my way because of any passion or prejudice and you are not going to be persuaded their way because of any passion or prejudice.

If you will be in the egg business with me for a little while—first, an incident about Pineda. If a man goes on a witness stand in a court and I don't think he is telling the truth I will keep pounding away at him as long as the Court will let me, or until I demonstrate that he lied, as I did with Pineda. It took a long time. I demonstrated he lied on that

stand and I demonstrated he lied several times and you will remember Mr. Hipelli when he tried to straighten him out said, "Well, your Honor, I am trying to conduct redirect examination," because after he was cross examined it was apparent from what was elicited from him by us that it was physically impossible for him to have done the things he did. It took a long time and then we found out that he didn't know Colonel Foster. You will remember when I went up and said, "You know you never saw [75] Colonel Foster in your life," and that is when he squirmed. That is when they knew they didn't have it all their own way. It is all right to put in these purchase orders and these Government contracts. Then we have some evidence. Then we were getting down to brass tacks. You saw the attitude of these gentlemen and you observed it and you know every word I say is true. Over a weekend you know how they tried to cure that.

Now, we come back to the egg business. You have seen the business operations from Mr. Whitmore's testimony, from the other witnesses, and apart from the testimony of the witnesses you have the story of the production by years. They are all here for you to take to the jury room. In 1944, 312,000 cases of eggs were handled by our company. That is ten million dozen. Five million eight hundred twenty-seven thousand pounds of butter, less maybe eight per cent or six per cent because butter is included with the cheese. In the period when Andrade and Pineda were there, I will run through

them: In 1941, two hundred ninety thousand plus cases of eggs; 1942, three hundred thirty-nine thousand plus cases of eggs; 1943, two hundred three thousand plus cases of eggs; they had handled nearly sixteen million pounds of butter. The firm of Nye & Nissen is one of the biggest plants, it has one of the biggest plants in this city. They have plants in Utah, two or three of them. They have a plant in Santa Cruz. They have a [76] payroll of three or four million dollars. They have two or three hundred employees, one hundred fifty, I think two hundred employees. They do a substantial business each year, millions of dollars, six, seven, eight, nine million dollars. The whole theory of that business is to get an egg to you as fast as possible after it leaves the chicken, and in as good condition as possible. That is why they built a chill box to prevent a reduction in quality over night. That is why they have ice on trains. That is why the firm of Nye & Nissen has this big storage room in their plant on Missouri Street that one of the witnesses for the Government said was as large as this room, that was in order to preserve the quality of eggs.

Now, have in mind that eggs are put in storage in the early part of the year and they are withdrawn and sold in the latter part of the year, and this is very important in connection with certain transactions. These storage eggs that you and I eat are sold to you at ten to fifteen cents a dozen higher than the eggs you buy fresh in the spring, and there is an exhibit to show it. Eliminate the business of storage and what have you? Assume

you are in the business and you bring eggs into your plant. What do you do? You immediately determine the quality of the eggs. If you did not you would go broke over night.

So the Department of Agriculture is in that plant all the time. They are there to examine the cases of eggs after the [77] quality has been determined. Now, you do that with all your eggs. Then you get an order for eggs and you submit those eggs for inspection. You remember the testimony of one of the witnesses, the antipathy of the Army after the Department of Agriculture was satisfied. The Army wouldn't accept the eggs. You may not have believed that until yesterday and out of a clear sky so many things have happened to the benefit of the defendants, unusual things. You never had the picture of this case until the Colonel sat on that stand yesterday; you never had the picture of this case until he sat up there yesterday breathing hard, every pore exuding hatred and venom; and don't forget that he is the man whom the Department of Justice selected to give the fair inspections on the waterfront. You saw it there right on that witness stand. That is the man who was supposed to have been deluded down on Townsend Street. You have to have in mind, please, you are still in the egg business, and when you deal with the Government, I have done a lot of business with them, sometimes they are fair, sometimes they are the meanest group of people I have ever seen in my life and it is wrong where the Army is buying eggs to have an Army man the final arbiter of their quality. When the

Department of Agriculture makes an inspection they are making an inspection for the broker or the vendor. They are not a purchasing agent. They are making an inspection of quality, but when the Army makes an inspection they are making an inspection to see whether they will take merchandise under a contract. The lowest grade for human consumption is a Standard, and we had witness after witness who testified that the Army, the department that Colonel Foster was a part of, were primarily buying Standard eggs, and you saw him on the stand. Do you think he would try to get an Extra egg every time a contract called for a Standard? Well, now, I leave it to you. What was he trying to get for the Army all the time. Do you remember the incident where Jack Smith took him on, an elderly man, and he never backed down. They were fighting in there because Colonel Foster or, rather, Colonel Hand, was always trying to get an advantage. That is why he was so unpopular there. What would you do? You are in the egg business now. You have a tremendous volume in business. You get eggs out of Petaluma, the finest egg place in the world. They come into your plant, come into the plant and candled right then and there and brought into San Francisco and you tender those eggs after they have been inspected and graded by the Department of Agriculture to an Army man and he won't take the eggs. He just says "No, I won't take these." He knows that he has an advantage. Standard eggs, the lowest grade of eggs that the man has. He knows that auto-

matically, because Standard eggs are the lowest he will take, and there are not enough Standard eggs in existence, there are not enough Standard eggs that come into a packing plant to fill the orders of the Army for Standard [79] eggs, so that he is always going to get better eggs when he says, "I won't take those."

That is reflected—you do not have to take my word for it—it is reflected in the testimony. It is reflected in the method of billing. Here you have about fifteen orders for Standard eggs and Nye & Nissen quoted a price of 24 cents. Then when an order comes for 300 cases they quote a price of nearly 26 cents, higher than Standards, higher than Extras, because they had to give them Extras. They don't have 300 cases. Ladies and gentlemen, if you can visualize that situation, there was no conspiracy. There could not be a conspiracy just to say that you bring in these men, men like Andrade and Pineda, and have them swear to something and say that because something happened again two years later—in other words, you are supposed to assume that because a man, a captain weighed some butter out at the Presidio and it was four pounds short on a 75,000-pound order, or it was four pounds short on 25 cases that by some mental gymnastics you are supposed to trace that incident back to an incident Mr. Pineda testified to years before in a butter room. That is theoretical. That is all it is. This theory is knocked into a cocked hat because the butter involved was eastern butter. It was cut in cubes. It was never cut in

Because it was eastern butter. So a quantity of butter came into the plant at Nye & Nissen; it was put out there for inspection and weighing, and what happened to it there I don't know. But you do know that we were entitled to be informed. Now, that was either handled as a bookkeeping transaction or the transaction never existed at all. They have a witness who says that butter weighed 56 pounds instead of 60 pounds. He said he sent a report to the quartermaster. Those reports are not here. We did our best to produce a clear picture of how butter was handled, just as clear as possible, and it is always handled that way. We produced it in this fashion, that every adjustment on weights was handled by a credit memorandum and we brought them in and they are here for you to look at. On a 30,000-pound order of butter the United States Quartermaster Corps, the United States Army, asked for a credit memorandum for ten pounds. They had 29,990 pounds delivered to them. That is how exact they are. You get a picture of their exactness; that was not produced through the Colonel, both the Colonels, but was produced by the defendants.

It is out of that background that these transactions are supposed to have emerged. That is

why I took the time with Pineda. That is why I tried to show the absurdity of 50 cases of eggs being here on the floor, brought out so the Colonel wouldn't know they were storage eggs. Always their storage plant is kept at 32 to 35 degrees. That storage plant of Nye & Nissen is kept at 32 to 35 degrees. If a case of eggs is going to be any warmer coming out of the plant than it would have been if it was taken out from the Merchants Ice and Cold Storage Company's plant, what is the difference; what is the difference if it is 32 degrees or 35 degrees? But they say these eggs were taken out, brought out and put on the floor. The Army inspects eggs in storage all the time. They put these cases out there and then the Colonel takes this one and that one and that one. The minute he took them and went to the candling booth somebody took them all out and put those cases back in their exact position, and the Colonel said he was rejecting eggs every day. There is no sense to that testimony. That is why I was always trying to get them to fix the time, place and persons present on every incident concerning testimony as to the switching of eggs. That occurred time after time. From the testimony of these girls who were here, that they took eggs, cases of eggs and they took them out, they put them back in other cases—whose eggs were they, who got the eggs, who were involved in those transactions? I don't know. Have you the slightest idea who got them? Has the Government established whose eggs they were? No, they haven't even put a word of testimony in on that. Ha-

somebody been deceived on account of that? No. Oh, they may say, well, four years [82] before a man got a case of eggs or something. What has that got to do with what happened later. So you have this disjointed case up to 1942.

Now, keep that in mind when the Judge tells you there must be a common meeting of minds to accomplish an unlawful purpose and everybody must be conscious of the fact that they are engaged in a conspiracy and with knowledge participate in it, execute it. What was the conspiracy? Compare that definition with the case of the Government here. What was the conspiracy to do? Are you going to say they proved a conspiracy because Colonel Hand went out there in the Presidio on one occasion and found three cases of eggs that were not good and then a week later found two cases that were not good? To give you an idea of the volume of business the Army was doing, in the year 1944 93,355 cases of eggs were sold to the Army, 242,000 pounds of butter, 2,800 pounds of cheese, and in the same period 66,000 cases of eggs were sold to the War Shipping Administration and 984,000 pounds of butter. We haven't got the exact figures of the transactions with the Army in the year 1941, but when you take the volume in 1944 of cases of eggs handled, which were 312,000, and in the year 1941 there were 290,000, you know that during all of this period of time from the testimony of the witnesses there was a tremendous volume of business being done. There was a substantial amount of business going on with the Army. From the year

1928 [83] until the indictment was returned in this case there must have been a million cases of eggs delivered to the Army; I would say a million cases of eggs. Let's cut it down a little lower, say 700,000. There were five cases out in the Presidio that had some bad eggs in them. Do you know of any business that would be as free from complaints as maybe ten cases out of around a million?

You heard described here how eggs are candled. You have seen the candling done here. They put in this box the highest grade, Large AA. They have a box here for Large A. They have a box for this and a box for that, twenty-five separate boxes. Most of the eggs go in the Large AA box which come up to the plant. They fill that box and then fill the next one. They are handling those eggs rapidly before the candling light, 3.30 cases an hour and you can figures 300 eggs to the case, which shows how rapidly they are putting eggs in boxes. You can't guarantee, nor is there any law that says you must guarantee the quality of your product, particularly a product that is perishable; so perishable, in fact, that hundreds and hundreds of thousands of them have to be handled rapidly in order to preserve them over a short period of time. The normal case of eggs comes out of Petaluma from the ranches and they are handled so rapidly that within one, two, three, four or maybe five days elapse between getting the ranchers' eggs and getting them out of the plant on Townsend Street and they [84] are always protecting and preserving against lessening the quality of the eggs.

Then they come in here with a case, one of these cases on the Hawaiian Shipper where the eggs remained on the dock for four days. They remained on board the vessel for ten days. The ship went to sea for two or three days and after it went to sea they found some bad eggs. They still had twelve or thirteen cases aboard that vessel that were ship's stores. A period of sixteen, eighteen or nineteen days elapsed and they used all the eggs, they used them at the same rate that they used the eggs on the previous voyage, yet the steward states the eggs were not good. That was an incident that was the subject matter of five separate witnesses' testimony. They come in and with all those witnesses go into every little detail—that shows you the length to which they will go in trying to secure a conviction. Now, I submit it to you as reasonable practice.

Here was the firm of Nye & Nissen investigated on the waterfront. Magee and Johnson are in their plant at 17th and Missouri Street. They are examining Mr. Berman in September. They are examining Mr. Moncharsh in September. They are examining Mr. Moncharsh again in November. They are going through their records. The Matson Navigation Company is the best client they have, or one of the best. The Department of Justice agents were themselves out in the very building when [85] the eggs left. Do you think Mr. Moncharsh or any human being with an ounce of sense, being investigated up to the hilt, would send four hundred cases of eggs out of his plant to his best customer, or one of the best, and know there was anything wrong

with the eggs? The investigators are there. They are talking to Berman. They want the records. They want this, they want that. The Matson Navigation Company wants four hundred cases of eggs and they want them inspected by the Department of Agriculture and they got them inspected by the Department of Agriculture and the inspection certificate, you remember one for 189 cases of eggs inspected on the 4th, and 211 inspected on the 5th. They had the inspector go and make the inspection and he was here to identify his signature, and that inspection certificate is here, the certificate of the Veterinary Corps inspector. In other words, the shipping company required the Veterinary Corps inspection and we have a tag for it and the 400 cases of eggs went on that ship, and when the cook and the steward came in and told how bad they were on board and the trouble they had and how the men wouldn't eat them—I don't like bad eggs, you don't like bad eggs, but I think you as jurors can understand what happened. You know it as clearly as I do. You heard the testimony that they got the cases of eggs down on the waterfront, they remained there three or four days, according to this record. You remember when they tried to get a fellow to come in here and say he [86] remembered about loading the eggs. He said, "I have a record here. We loaded on the 4th, 5th, 6th and 7th". Nobody knows what date they went on the ship, but we know the eggs didn't go on the first day. Whether they went on the 5th, 6th or 7th, I don't know. We know the ship remained in the stream,

we know that eggs were bought for port feeding. We know that the ship had eggs from a prior voyage and that it remained in the stream for ten or twelve days, and it went to sea two or three or four days, and after it went to sea they find some of the eggs are bad. Whose eggs were they? They did not know. Now, according to the Government Mr. Moncharsh is supposed to be guilty of an offense in connection with that, an offense established to a moral certainty and beyond a reasonable doubt.

Mr. Menges—think of Mr. Menges in this case and of the argument by Mr. Houck, when he was trying to argue to you, present his case in the best way he could. Remember when he tried to tell you how he justifies keeping a man in this courtroom, that fellow right there, Mr. Houck tries to say that he has some guilt in connection with the Hawaiian Shipper, the sixth substantive count. He had no more to do with it than a man or woman in this jury box. He is just a man in charge of a candling room. There is not any incident relating to a single substantive count that relates to the candling of eggs in that plant, not one. That man had to sit here for twelve weeks and defend himself against a charge and when it was stated in the [87] best manner possible—well, you heard the statement, he sits there now, he was ashamed to make it, he was ashamed to make it that way; a man who took an oath as a lawyer, just think of his statment that would justify the presence of that man, Menges, in relation to those substantive counts. Did they prove

anything further against Menges? Did you ever hear of a thing that Menges was charged with? Yet he sat in this courtroom defending his very life for a very long period of time, just as you have listened to this case.

The Court: The jurors may be excused until two o'clock.

(The trial was thereupon recessed until two o'clock p.m.) [88]

Afternoon Session, Thursday, April 4, 1946, 2:00 p.m.

The Court: Do you waive the roll call, stipulating and agreeing all the jurors are present and in the box?

Mr. Pratt: Yes, your Honor.

Mr. Faulkner: Stipulated.

The Court: Proceed.

Mr. Faulkner: At the recess, ladies and gentlemen, I had covered a considerable portion of the basic background of this case. I talked to you about the American Shipper. I want to add another thought to that. That was a shipment to the Matson Navigation Company which occurred in December of 1944. No complaint of any kind, character or description was ever written or communicated to Nye & Nissen as the result of that transaction. Any same shipper, knowing the conditions on board those Liberty ships at that time, knowing the perishability of eggs, knowing the effect of refrigeration on eggs, would even presume to present a claim

arising out of the use of those eggs which lasted an entire voyage.

There are some isolated transactions that I want to call your attention to. You remember the incident in the Merchants Ice and Cold Storage Company. A man got up here in court—you can't gloss over things lightly—the Court was trying to establish the time and the place so that the proper foundation could be laid, and you will remember that every time a witness [89] pinned himself down to a transaction we have come in here with the full explanation of that transaction. There is not a single departure from that. So one of the transactions testified to by Pineda related to an incident in the Merchants Ice and Cold Storage Company. He had Mr. Berman there. He had people who were not even in the employ of the company. In other words, there was always a design in the presentation of his testimony to name those four men on every occasion that he could. Well, Mr. Goddard told you of that transaction. He brought the purchase order in here. It is there for you to inspect. Here is the transaction: an order for 2,000 cases of eggs; 1,850 cases of eggs had been delivered. Every case of those eggs, according to this record, were prepared under the direction of the Veterinary Corps. I don't mean inspected—prepared. They came, every case came from Petaluma. They came down here to the plant on Townsend Street. They never went into the plant on Missouri Street. They are delivered at the ice house. They are inspected again at the ice house and they are accepted by the Army.

Some weeks go by. A communication is made to Nye & Nissen. Mr. Smith said, "I will take them back, I will take them all back". How do you think an egg business is conducted? If the buyer says, "I have a complaint", "Well, what is your complaint?", and if you are right you get the credit memorandum; if you are right you get new merchandise. Here was an instance where the Army was completely [90] wrong, it had no right whatever to a substitution of eggs. They told Mr. Smith they had a thought that these wires may have slipped. He said, "All right, I'll take them all back". He said, "No, Mr. Smith, we just ask you to do it our way. We want to examine each one of these cases". They examined each case, and you don't think we concocted this story—you heard Pineda testify. We do not come in and say that no such incident ever occurred. Every incident we have tried to recapture and give to you as it occurred and when there are records involved and shipping orders and tags, I think we have done a very good job, having in mind the lapse of time. You heard Pineda say they took each case and turned it over. He said he scuffed his feet. How can you scuff eight marks off a case—why, the marks you make with your feet are more noticeable than the marks of the movement of the wire. Wire moves. They all don't slip, but some of them slip. Now, in that quantity of 1850 cases of eggs five per cent were inspected; that is over ninety cases of eggs. The wires on top were removed, one hundred eggs taken out of each case by each one of the

inspectors, or at least that, before they were accepted in the ice house, and when they got all through they had sixty-five cases that they found the wire had slipped, and we know there were at least ninety-five cases, or ninety cases, rather, in that quantity of eggs that had been opened right there in that ice plant; we have to defend against a transaction like that. [91] Pineda placed it six years ago, when actually it was nearly four years ago. I think we have given you the records. You can visualize the transaction there at the ice plant. There are these 1850 cases of eggs and they go through the eggs and they examine them. You know that five per cent of those cases had been opened right in that ice box, or that ice plant, because inspections have a minimum of five per cent.

Now, we have the incident of the butter scales. We find that scale in here. You saw that boy put that butter on it. The first time when he put the butter on there I didn't know as much about it—you only get these things as you go along—my heart sank, but my people told me to proceed in the manner I did, because they said he never did that in his life to fool an Army inspector. Then we brought him back and everyone in this court-room remembers the incident. He was caught in a jam and he took a piece of paper and he wiped the bottom of that scale because you can't put butter under the scale without have it out of balance, and the minute I said to him, "Do they balance in this direction?", you remember it as clearly as I do; I said, "Now, you have done all to that scale

that you wish and it is out of balance", and he took a piece of paper and he wiped the under part of the scale and when he got through wiping off the under part the scale was still out of balance. The first thing an Army inspector does is to see that that scale is in exact balance. Isn't that a [92] silly thing to do, to try to fool somebody in relation to butter which will be weighed at the point of delivery. You remember that even with the minute particles of butter that he wiped off it was off balance and when he got through wiping it off the scale was still off balance; he is supposed to have been doing that with an Army inspector taking every twentieth print except for the period of time that he would go to another part of the room to examine cases that had gone through before. Now, I have already referred to the ten pounds out of thirty thousand being short and forty-six pounds another occasion. Is there a single dispute with the Army on their weights? Were there ever in dispute the question of weights on any transaction? They got a credit memorandum or a revised bill right away. They have all those records, every one of them out there on the post, and they bring in Pineda to establish the facts that they have in their possession. There was no effort to fool them. You could not exist in a business such as the egg business with these large firms, and Nye & Nissen is one of them, one of the few survivors of the independent egg dealers of which there were so many many years ago. San Franciscans will remember about thirty or forty or fifty of them, all gradually

weeded out because of the competition of the larger firms that are in a position to give better service.

Now, you have here this situation—you have the butter [93] incident, you have the ice house, you have the incidents that Mr. Pineda testified to and that Mr. Sullivan talked about. You ladies and gentlemen recognize that within the limitations of time that have been agreed upon here—it is partly because of the Jury's patience in remaining here for so many weeks, I know what that means to jurors—there isn't really time to go through the testimony of Pineda page after page, instance after instance, and have him give an explanation, but you will remember that on every instance relating to eggs I said, "Where did the eggs come from that you refer to?", "I don't know." "After these transactions occurred, where did the eggs go to?", "I don't know." "Did you ever see a purchase order for the eggs?", "I did not." "Did you ever see an invoice for the eggs?", "I did not." "Did you ever deliver the eggs?", "I did not."

That is this record. Once he was told to go down to the waterfront on a truck in talking about eggs that were moved in and out of the plant. He never delivered any of them. He does not know what the orders were. He does not know what the invoice shows, and they have all the records. They never brought a purchase order, except in relation to those ships. They never brought an Army purchase order or an Army hand tag in here, not a single one, and all of Pinedas testimony exclusively relates to selling to the U. S. Army. Do you realize

that the Veterinary Corps—all of the things he testified to [94] were frauds upon Colonel Hand, Colonel Foster, Colonel Keelsmeier; not a single instance to show that poor quality merchandise was ever at any time delivered and they were selling in staggering quantities, having in mind the way we did business, the amount of business handled by our firm, or a firm like Nye & Nissen, two, three, four hundred thousand cases of eggs a year; that is a very large quantity; millions of pounds of butter.

Now, I would like to call your attention to the William S. Clark. There is another isolated transaction. You must resolve the facts relating to the William S. Clark from the background. Who is the customer? The American President Lines. They did business with Nye & Nissen for 25 years. Who was the man who handled their account? Mr. Smith there. Every time Mr. Donald wanted to talk to Nye & Nissen he talked to Mr. Smith. That is his testimony, except one he talked to Mr. Moncharsh, on all War Shipping business; the head of the War Shipping Administration, he knew only one man at the firm of Nye & Nissen practically, and that was Mr. Smith. He talked to Mr. Moncharsh only once.

Now, here is the American President Lines. Mr. Fisk ordered the eggs. The only reason he talked to Mr. Moncharsh when there was a complaint about the eggs was that Mr. Smith was not there, and he made a complaint about the eggs. This was in October of 1943. Those eggs went aboard a vessel in the control [95] of the American President Lines, 45 cases were involved. When they got to Long

Beach the eggs were replaced; they were recandled. A report was made to the American President Line. We never saw that report. When the butter came up to San Francisco Mr. Fisk went up there and tested the butter and he knew its condition was due to refrigeration; he testified so. He secured a full credit for all the butter. He secured a credit for 36 cases of eggs. He knew, just as he testified, the circumstances about the condition of that merchandise, that it was due to refrigeration. He had been there in that capacity for twenty-five years.

I want to show you how badly off a person can be in court if it is not for some of these strange things that happen. You remember that fellow Brown who was the cook on that ship. He came here and under the guidance at times of the prosecuting officers he told a very nice story, and again you remember, or do you remember that they asked him about these eggs and he said oh, they were bad eggs, unquestionably bad. Now, it happened that that man had testified in another case and he had explained in that other case why the eggs were bad. He had testified on oath, just as he did here, and he had said the refrigeration was out of order and the eggs had mold on them and they had musk and then he said "Some calls it mold and some calls it musk; but I calls it whiskers". Do you remember that? That is what he had said in another case. I could not [96] get him to admit that here and we brought his own diagram, or Judge Goodell's handwriting on it, where he drew, and it is right there, you can see it, he drew it in; you can

see where he drew the mold and the musk and the fuzz on those eggs. He drew it right there at the time when the case was fresh in his mind, not years later when he is guided by something else.

Look at that box (indicating), egg box. I asked Mr. Wirth, what did you do, drop it in the ocean? Look at it. Where did it get in that condition except from moisture? From an ice box out of order. Just look at it. I had him try to put that cover on according to his theory and it can't be done; it is impossible to do it because those pieces of board are to be nailed together and when you put the nails together on one side they don't fit, so you take them off and put them together on that side, and they don't fit (indicating with box). Their theory was that that box of eggs had never been opened. We demonstrated right here that it had been, but did you ever realize this, ladies and gentlemen, this quantity of eggs that had at one time been in this box, some eggs that had been in that box were at one time in a storage plant in Los Angeles. We say that there is no contradiction, and there is ample opportunity to contradict from various sources, all of the employees of Nye & Nissen, all of the girls who were here, no contradiction that the orderly practice was that the moment eggs came into the plant it was to candle them; all storage [97] eggs were candled the moment they came in and the minute that was done they were available. At that time all cases that went to the waterfront had to be, I mean all the cases of eggs had to be wooden. That was the normal course of business, for eggs

that come into that plant from an icehouse, to have these eggs candled immediately by the girls and transferred ultimately in some other type case, and these cases are used for the shipments to the waterfront, and boxes were so scarce at that time, as was explained by one of the witnesses, that later in 1944 the Government agencies permitted you to use either kind, and the record here shows that.

Now, there were a quantity of eggs put in this box and presumably put on the William S. Clark. Every one of those cases was opened. Every one of those cases was opened. They were opened by the inspector, Gartenberg and the other man who opened three; another group of men opened seven, and every case was candled in the plant of Nye & Nissen in Los Angeles. When it was all done those cases have obviously been nailed up, so that you know they had been opened once and that they did not come into San Francisco or any place without having been opened once, and their theory is that they just shipped some cold storage eggs to one of the oldest customers they had, the American President Lines, and billed them as AA Large or Medium eggs. When the transaction as between the shipping company and the vendor is complete, it is settled to the satisfaction of [98] the parties, then they try to come in and get some criminality out of it some place. The way they try to do that is by suspicion and surmise. They never proved where the eggs came from. That was their burden, but in the course of their case they disturbed, and I am quite sure that you observed as this case progressed they dis-

turbed that theory and in that theory Mr. Gartenberg played a part. I am not going to castigate any witness in this case, or raise my voice, but you have in this record a letter. I am quite sure Mr. Pratt is going to read the letter to you. I am quite sure the main part of his argument against Moncharsh will be to read a couple of lines. You remember the letter in which he talked about the Army and the boys, and we must do the right thing by our boys. He said he dictated it to Mrs. Weinstein. She said he did not. Well, she is Mr. Moncharsh's sister, so she would lie for her brother. Mr. Moncharsh says he never received it. So, he will lie to save himself. Then you have a situation that would be most perplexing and would create a doubt in my mind were I a juror, where a person to whom you say you dictated a letter says you did not, and the person to whom you addressed it states "I never received it". We have much more in this record. Did you ever realize that the letter itself is not the type of letter that a man would ever write to his boss, to the head of his company? Well, there is something here that I know no juror realizes. I am quite sure they don't realize it. That [99] letter is a false letter. That letter was never written at the time it was supposed to have been written, and I have gone through this case, I remembered it from the day that it occurred, and I got the testimony in this record. What time did Gartenberg go down to the ship? He went down with a man named Abell. They got away from the ice house at ten o'clock in the morning and they left, that is the

testimony, they left, and he never went back to the William S. Clark. That is the testimony. That is his testimony. That is Abell's testimony. They left because they were getting ready to serve lunch. After lunch along came Wirth, Rynerson and Bradway, and maybe another fellow. That was after Gartenberg had left the ship. Now, listen to his letter. He said, "I spent all morning at the harbor checking on the eggs and butter delivered to the William S. Clark". The letter is supposed to be dated November 3. He is writing on that day. "I spent all morning on the William S. Clark". Then he goes further and he says, "The steward of the ship was very much excited about the kind of eggs he got and stated that he certainly was glad that he was detained at the Long Beach Harbor, which will give him a chance to change the eggs and butter. He also stated to me that he saw the same butter and eggs on another ship which had left the harbor yesterday morning and that they had the same trouble. They had to break out nine hundred eggs to get five hundred".

Now, I don't know what that means, but continuing—"He [100] told me that he had called in the Army and Navy inspectors and also a civilian inspector in Long Beach, who was along with the veterinarian. He did not know whether he was a state or county man. And they have all told him that these eggs were under grade eggs and had considerable loss in them and were not fit for them to go to sea". Those men were never on that ship at the time Gartenberg was talking to that steward.

and Gartenberg never went back to the ship. I have it in the evidence, I have it in Abell's evidence and I have the exact time the other men came. They came to the ship after lunch and they started to candle these eggs. When did Mr. Gartenberg write the letter? On that day that he said Dora Weinstock wrote it? He could not have known at the time he wrote it those things.

There is another instance here. Mr. Moncharsh said he never received a personal complaint. Well, he was shown some letter. "Did you receive that letter?". "I never saw the letter." Why would a man deny receiving a letter? Nye & Nissen have had hundreds of complaints: no question about it. Anyone knows that. Moncharsh says he has never received a personal complaint about these ships except the Clark. Then they show him another letter; Mr. Pratt read that before and he will read it again. But let me tell you something about the letter. The eggs were delivered on the 13th of March—this is only in for impeachment. You are not to consider this letter under the law as establishing any fact against the [101] defendants. We are all human beings, ordinary human beings, and those little refinements of the law are lost sight of by the Jury. Here is a quantity of eggs that go to the Hammond Shipping Company on March 13. The ship goes to sea and on the fourth of April the cook begins to feel that he does not like the eggs. What he says is "The eggs are not good enough, do not hold together, it is almost impossible to serve them straight up". Then a month passes

and on May 3 he starts complaining about the eggs, and the real complaint is nearly two months after the eggs were put aboard the vessel.

A very likely theory, isn't it, that Mr. Moncharsh knew about that, knew that a complaint had been received and he was testifying falsely. Well, when he said he did not remember a single complaint and they showed him the letter and they showed him his answer, I will tell you how much impression those letters made on him. These letters, which you will have before, these letters all relate, and it is very clearly indicated that they all relate to the SS. Edward Bates, and those letters are supposed to have cut an indelible mark on the memory of Mr. Moncharsh, so he would at a later time, some years later, over three years later, remember in the course of his business this one and that one. This shows how clearly he must have read the letter. He says in his reply—this is to the attention of Mr. Babcock, who was called as a witness, you know Mr. Babcock, from the Hammond Shipping Company. [102] —he says, "Since you have quite an elaborate statement in regard to these eggs in your letter dated June 30 which you received from your Mr. Bates"—these letters that are supposed to have made such an impression upon him, you see, when he starts to reply he is talking about a complaint to the Hammond Shipping Company from their Mr. Bates. Then he goes on, "However, we have never received a serious complaint like your Mr. Bates has outlined to you".

Well, ladies and gentlemen, if you feel you have

to disregard all of the substantial evidence of Mr. Moncharsh because of that letter, then I say to you as fair men and women, disregard every witness who has testified for the Government, because that is minor impeachment compared to the impeachment that these other people have gone through. Take Mr. Andrade, for instance. Once you catch a man in a cold-blooded lie in connection with the subject matter of a case—I don't mean a conversation, or what he said this way or what he said that way—a cold-blooded lie material to the case, there is no more reason to comment on his evidence, there is no more reason to cross-examine him. Mr. Andrade testified that 500 cases of eggs were stamped in his presence, or nearly all of them, by a Department of Agriculture inspector for an order for the Navy. On another occasion a thousand cases of eggs were stamped for the Navy and that after the Department of Agriculture stamped those eggs in 349 Townsend Street the employees of Nye & Nissen [103] moved them away and another 500 cases were substituted, and another thousand cases were substituted, and that every case was marked "Special", and he stamped the cases—he said every one of those cases was marked, some of them by Mr. Moncharsh with those stamps that said "U. S. Department of Agriculture Special". We would be sunk on that testimony if we didn't have some way of ascertaining that from the Department of Agriculture. None of them ever testified to such an instance and we have those records here. What do we find? We find the United States Department of Agriculture never

ordered Specials. We find that all inspections are at the dock. One of these papers there, the inspection was on Townsend Street. You saw Mr. [illegible] there and how he tried to stick to his paper and how I finally pried him away from that paper and he finally testified afterward that any eggs delivered to the Navy at that time were always inspected at the dock except in a single instance when a ship was tied up at Mare Island, and when we produced the records of the State Harbor Board that showed that every one of those ships was loading at the very time these inspections were made and, further, that the U. S. Navy never in the entire period—we gave him a subpoena to bring a single record where they ever ordered Specials from anybody, and he never had a record. What are you going to do in that situation? Aren't those words true? Isn't every word I have said true? Wasn't [104] that the most material thing he testified to and every word of it was perjury, perjury, perjury.

We now come, ladies and gentlemen, to a series of incidents in 1944. They emerge out of this—well, as one complaint, that is the William Clark in 1943 and the two cases of eggs for Colonel Hand for the Presidio in 1941. 1938, 1939, 1940, 1941 and 1942, to October of 1943, two transactions; that is all. That is the case. Six years of business activity, and millions of cases of eggs, millions of pounds of butter—two cases of eggs in the Presidio and the William S. Clark.

Something happened in 1944. It is not my province to say what it was. I am not going to argue

that with you. I haven't any right to argue apart from this record. I have no right to argue that with you. What was the cause of the prosecution? It is not in the record. We would be here until Doomsday to try to prove it. The ordinary policeman knows the answer and when he says, "I received a complaint. In response to the complaint I did certain things." How did this investigation start in 1944? Do you know? Why did they start inspecting merchandise at the waetrfront of Nye & Nissen? Did they do it because of the William S. Clark? That occurred in September. Did they do it because the Colonel, who was then a lieutenant, had some bad eggs given to the Presidio five years before? Don't speculate on it. Just realize that it happened that way. They start to inspect Nye & Nissen's merchandise. When did [106] they start? Don't you believe those men. The record is too clear on the time they started. The record is too clear. It will show that they started at a certain time, but they don't know when the Department of Justice started. They never let a word out of this report that did not come from a carefully prepared sheet. I have never seen the like of it in my entire career of time in these courts, and it has been over twenty years.

Colonel Hand was assigned to this case by the President of the United States. At other times he would go a little lower, he would get his orders from the War Department, and we finally got him into the situation where he got his orders from General Dewitt. He started in on the case where

the orders would come from the President, then from the War Department, then from General Dewitt. He told us he was assigned to this case three weeks before the Henry White incident, which would be, three weeks before that, would be April 9. Mr. Nystrom said that he got in touch with the FBI on about the same day, that he asked to borrow the money and he did tell Mr. Berman he was in the clutches of the FBI. I would like to read you his testimony. He concocted a story for Mr. Berman and in summing up the incident, an incident ten years old, he made it appear as though it was occurring at that moment. In order to get a hundred dollars for some purpose he concocted it, but, of course, he wouldn't do that here. He wouldn't concoct a story [106] here. Well, the time is, I think the time is April 8, so you have a situation. April 8, 9, 10, 11, 12, 13, 14, 15, 16, 17, 18, 19, April 20, 21, 22, and 23, those days go by where not a single order that must have been inspected during that entire period of time was an ounce short. Then on the 24th of April, out of a clear sky, the firm of Nye & Nissen from the 24th of April to the 13th of May, suddenly decide to enter upon a fraudulent scheme through those two boys, Ruby Goddard and Henry Berman, just as fine two men as any, just as reliable, just as fine as I know. What do you find? You find a series of transactions wherein every order, from then on that that man delivered from the 24th off April to the 13th of May, every order he delivered he gets on his truck some eggs that haven't got a Department of Agriculture stamp,

and there are the records, look at the time on them, all of them. There are the records; all of them, all kinds of eggs, AA, Medium eggs, in our plant, and he gets on every one of those truck-loads eggs that have a green label but without a stamp, and he gets short weight cheese; no short weight cheese before. Then he leaves their employ and there is not a single instance after he left their employ, not a single one except the Cape, something, where there was an order of eight cases, and I am not going to argue to this jury that in this million dollar fraud case, and I am not going to argue anything about eight cases of eggs. [107]

What happened there? You have to try to reconcile things to the truth. Mr. Berman says his method of filling his orders was that he would tell his drivers he had four of them, to get so many cases out of there of medium eggs, get so many pounds of cheese. Now, these cases of eggs got down there, they were taken down there by Mr. Nystrom. He told on the witness stand of how he would get them and he told how the eggs would be singled out and how the butter would be singled out to them and how the cheese—it sounded swell for a few minutes. Then I asked him, "Do you know where the eggs came from?" "I don't know." "Do you know who gave them to you?" "I don't know." "Where did the butter come from?" "I don't know." "Where did the cheese come from, do you know what part of the plant?" "I don't know." I took him through all the ships, one by one, on cross-examination, and I think there were two that

he had any recollection of where he got the butter, eggs, cheese, in the plant, but he recited a full story on his direct examination. There is a fact or circumstance that would predominantly show the lack of knowledge of that witness.

You have in mind that Mr. Goddard's method of operation is entirely different than Mr. Berman's. All these ships with the exception of three were handled by Mr. Berman. There are three ships, the Cape Cumberland, the Philippa and the Cape Breton, handled by Mr. Goddard. The only time there is any objection to a single item in Goddard's merchandise are the three instances [108] when Mr. Nystrom took them to the waterfront. Did you ever realize that? Eighty-six ships between the 27th of April and May 10, with his usual driver taking them all and there are only three complaints, the Cape Cumberland, the Philippa and the Cape Breton. How could a mistake be made in that way unless Mr. Nystrom was responsible for it? They will state that Mr. Ranson took that truck, but he didn't do any such thing; he never said he did and you can't concluded he did; if you look at the record you will find on May 10, the day of that incident, three ships were serviced, the Cape Cumbarland, the Cape Breton and another ship. Mr. Nystrom took them all. That would be the logical thing for him to do when he went to the waterfront, take those three orders, and that Ransom has no relation to the Cape Breton. Mr. Nystrom took it to the Cumberland and the Breton. He took it to the Philippa and in that period of time 83 other ships were serviced

by Mr. Goddard without a complaint about an ounce of butter on any ship. All of these eggs were medium eggs, not a single case of large eggs involved. How did that happen? Is it a coincidence? Do you believe that after fifty years in the egg business a company is suddenly going to lose its mind and for a period of twelve days they are going to supply fifteen ships out of two hundred twenty-one with bad merchandise? That is the backbone of this case, and they can't explains that situation away.

Now, Mr. Pratt said that Mr. Berman may have been tipped off. Do you remember that? But that does not explain the situation before April 1. We took those records, we showed six weeks before April 1, we showed six weeks after May 15 and it exactly conformed between the weight of the cheese, Berman's cheese that went out on orders which averaged 26 pounds, and the cheese that he received during the same period, which averaged within a fraction of a pound, 26 pounds.

Now, getting back to Nystrom and the problem of getting out merchandise on orders. Nystrom was a man who had been there a long time. It was proper for Berman to delegate responsibility to him. It was not wrong for him to say, "Get three 20's for this order and fifty cases of eggs." Take the instance of the Josiah Royce. He took eggs over there, ten cases of eggs to the Josiah Royce. They were small eggs. They were sent back. Berman told him to take ten cases down there to the Royce to replace that order and he gave them the

ten cases. That was a mistake clearly made by Nystrom.

I want to get this clear in your mind. There isn't any question that on that waterfront those eggs were of two kinds. They were eggs inspected by the Department of Agriculture and were classified as medium eggs, and then those other cases, those fifteen and ten and nine cases, you remember them from time to time, there is no question those eggs were small. There is no question in my mind they were not inspected by the [110] Department of Agriculture. How did the eggs get down there? Did they get down there because Mr. Moncharsh and Mr. Smith and these other men had entered into a conspiracy for a couple of weeks to give them some bad eggs, small eggs? You cannot believe that. That would be an unfair thing to believe. Mr. Moncharsh had nothing more to do with those transactions than the man in the moon, and in connection with him you will observe when Mr. Pratt concludes it will be as clear to you as can be that he is only interested in one man. He will call him the brains of this conspiracy, a man who had corrupted everybody around him. All he ever did was to give somebody a job. The Jewish people are kind to their own. We know that. I am not going to talk about that, but we know that Mr. Berman, or Mr. Goddard is related to him. He has a job. Mr. Berman is related to him. He has a job. Is that wrong? Is there anything wrong because Mr. Eichler has some relationship to him? Mr. Eichler was a very fine man. Mr. Moncharsh is the head

of a fine company. These men are business men. They did not stand mute when the Government's case closed. They took the stand and testified. They opened the entire door for the period covered in that indictment. The law does not compel a man to testify. They presented themselves, they told their story. They brought the records in.

Now, ladies and gentlemen, here is the ordinary case. Here is a paper. I testify; I am an expert. I testify that Mr. [111] Schumaker never signed that paper. Then Mr. Pratt comes in. He is an expert. He testifies Mr. Schumacher did sign the paper. Then what happens. The paper is given to the Jury and they look at it and they make up their minds. But has Nye & Nissen had a chance here in this case? Have you ever seen those eggs? Have you ever seen these weights? You haven't seen anything. You haven't seen a thing. You have listened to men talk and you have listened to an opinion expressed by a man who worked under that man there (indicating), the last witness for the Government, and I say to you his officers, anyone working under him, never did, as he said, try to be fair in those inspections on the waterfront. Why weren't Nye & Nissen permitted down there? Why wasn't the Department of Agriculture asked to go down there and determine these grades? Why did it have to be Colonel Hand? Why did it have to be him? Why was it they were told nothing? Why was that? I will tell you why, and this is the only comment I am going to make. This case was physically made. The case was physically made

from the beginning. By that I mean when you reflect on this case you will see that every word I say is true. They produced the case to try to prove a man guilty. They did not produce the case to try to find out the facts. That is as clear as can be.

Ladies and gentlemen, I want to finish so Mr. Pratt can finish his argument today. I have done the best I could to have a fair case presented to you. I have tried to do that. [112] We have produced all the documents we could find, we produced them one by one. So, ladies and gentlemen, I humbly ask of you to discharge your duties and do what the law requires of you, consider the evidence based on his Honor's instructions. He has the last word. I ask no pity or sympathy, but their whole lives are at stake. You know that as well as I do. There is a big business at stake. You know that. On the other hand, they ask that you be fair. You cannot permit passion, prejudice or the odor of eggs to affect your verdict, because this is not a case of the odor of individual eggs when millions of eggs are involved, millions of pounds of butter. It is a question of whether or not these men conspired among themselves to commit a crime. They didn't; they didn't; they couldn't; thank you.

The Court: The jurors may take a recess.

(After recess.)

The Court: Do you waive the roll call, stipulating and agreeing all the jurors are present and seated in the box?

Mr. Faulkner: Yes, your Honor.

Mr. Pratt: We stipulate.

The Court: Proceed. [113]

CLOSING ARGUMENT ON BEHALF OF GOVERNMENT BY MR. PRATT

Mr. Pratt: If the Court please, and ladies and gentlemen of the Jury, I marvel at your patience. It has been such a long, long, long trial, and I think it is marvelous that fourteen men and women can sit here and not show some little impatience at the length of the trial; I thank you all. I want to thank the Court for his courtesy and kindness during this long period. I also want to thank Mr. Faulkner. Mr. Faulkner has been grand to me, even to the extent of sending me tickets to the races last Saturday, which was particularly appreciated because I think he was back here working while I was out there getting, well I was going to say the sun did shine, but it pretty near rained all the time. At all events, this long period for me has had a lot of pleasure. As you all know my home is in Washington, and to have the opportunity to spend several months in the State of California and in the City of San Francisco has been a great treat. It is beyond anybody's imagination, almost, who has not been here before, to appreciate the marvelous, natural setting of this beautiful city. It is just beyond any description.

Now, so far as this case is concerned, I don't want to burden you any longer than is absolutely necessary, but, after all, there are certain features of the

case that I must discuss, and one thing in particular that I want to touch on with some [114] definiteness is the matter of these so-called substantive counts in the indictment. That is to say, the second, third, fourth, fifth, sixth, and seventh counts.

Mr. Houck in his argument yesterday adequately covered the conspiracy count and he left for me to some extent, at least, to dwell on these substantive counts. Now, the statute he read to you, I think he read it or described it, the statute under which these substantive counts are based is called the "False Claim Statute," and in effect it makes it an offense to make a false claim of the Government.

Now, the first of these counts—first, each of these counts relates to a particular invoice which was issued by Nye & Nissen, and relates to a shipment of eggs, butter or cheese to one or the other of these several ships. Now, the first of these substantive counts, Count 2, relates to the SS. Cape Charles. It is alleged in effect that a false invoice was submitted to the Government in relation to the delivery of eggs and cheese on this ship. Now, the delivery occurred on April 29. The invoice describes 36 cases of Medium Processed AA eggs, and also describes 3 cases of Cheddar cheese, 720 pound. Now, the evidence shows that the delivery to that ship was made on that date by Nystrom and his testimony connects both Mr. Berman and Mr. Goddard with the indicating of what was to go on the boat, and the testimony was that the eggs and cheese were indicated to him to put on his truck to carry to the ship [115] by both Berman and Goddard.

Now, on that same day, the 29th of April, the testimony of Major Evans, the Veterinary officer of the Army, went out onto the ship with the special agents of the Department of Justice and found the 36 cases of eggs and found the 3 cases of Cheddar cheese. As I say, the eggs were invoiced as Medium Processed AA eggs. It developed from the inspection by Major Evans that there were 36 cases of eggs there, but of the 36 cases four were unstamped cases, while the other 32 cases were stamped with the Department of Agriculture stamp. Now, these four unstamped cases developed to be very small eggs and, incidentally, in one of the cases was found the candler's tag marked "Pullets." That is an exhibit in this case, Exhibit 35.

Major Evans examined these eggs, mind you, on the very day they were delivered on the boat and he found instead of there being Medium Processed AA that they were Small Grade B eggs.

Furthermore, it appears from the evidence that Special Agent Dallas Johnson weighed this cheese. The cheese was invoiced at 240 pounds. The weight as determined by Special Agent Johnson was 149 pounds; in other words, it was 91 pounds short.

Now, furthermore, it appears that the stamps on the cases that were stamped, on the 32 cases they bore the date of April 27, 1944, and then from the evidence it appears that it came [446] into the case later. Reid's certificate: the inspector of the Department of Agriculture; it showed that he made his inspection of those eggs on April 29, the same day that the eggs were delivered. It is perfectly

obvious that the eggs that were in the samped cases on that ship were not the eggs that were inspected by Mr. Reid. They were other eggs and that is demonstrated by the examination made by Major Evans. They were not AA eggs. They were B eggs. They were not Medium eggs in weight. They were Small eggs. Besides that, as I said before, the four unstamped cases, one of them had this Pullet tag in it, and the candler's report of the candling. It is perfectly clear that there was a deliberate, premeditated fraud upon the Government in connection with the delivery of those eggs and then the invoicing to the Government of that amount. So much for that count.

Now, the next count is Count 3. Likewise, that relates to an invoice issued by Nye & Nissen to the Government for 40 cases of Medium Processed AA eggs, 1 cases of Romano Dolce, a case of 5 pounds American Processed cheese and 1 case of Cheddar Loaf cheese. All of that was delivered on the Mission San Diego. This ship, according to the claim of the invoice, received these products on May 1st, 1944. The next day Major Evans and one or the other of these special agents of the Department of Justice examined these products on that ship and what did they find? They found that of the 40 cases of [117] Medium Processed AA eggs, so-called, they were Small B eggs and not processed. There was no Department of Agriculture stamp on them and the eggs were far below the quality indicated by the invoice. Now, what about the cheese? The cheese was weighed and it developed that the case

of Romano Dolce cheese invoiced at 65 pounds actually weighed 57 pounds, 13 ounces. Then the case of Cheddar Loaf cheese which was invoiced at 30 pounds weighed 24 pounds and some ounces; I have not got the ounces. At all events, that is just another of the instances that appeared with other evidence showing that Cheddar Loaf cheese during this period of time was uniformly of the weight of 24, 25, 26, 27 pounds and were in every instance invoiced to the Government at 30 pounds. So much for the third count.

The fourth count relates to the SS. Francis W. Parker. On the ninth of May, 1944, there were delivered to that ship 45 cases of eggs which were invoiced by Nye & Nissen to the Government as Medium Processed AA eggs, and these eggs, as in the previous instance, were delivered by Nystrom. He received the eggs and cheese in the third count from Berman and Goddard, and in the fourth count, the one relating to the Francis W. Parker, they were delivered by Nystrom.

Now, what were these 45 cases of eggs as determined by Major Evans' examination? Of the 45 cases, 38 were stamped with the Department of Agriculture stamp. Seven cases were unstamped, that were weighed there on the steamship and weighed these [118] weights: 35 pounds, 6 ounces, 33 pounds, 8 ounces, 33 pounds, 6 ounces, 34 pounds, 8 ounces, 33 pounds, 8 ounces, 32 pounds, 8 ounces, 34 pounds, 8 ounces. Each of these cases of eggs that weighed any less than 34 pounds are called Peewee eggs. The other unstamped stamped cases

weighed just closely above the medium weight for Small eggs, and we had these again invoiced to the Government as Medium Processed AA eggs. Now, some of these eggs, these little eggs, are in evidence as Exhibit 171. So much for that count.

The fifth count relates to a shipment by Nye & Nissen to the SS. Gilbert Hitchcock. This invoice covered 55 cases of Medium Processed AA eggs and 2 cases of Cheddar Trips, that is Triplets, three to a box. An examination of these products on the ship occurred the same day, namely, on May 1. This was May 1, 1944. That is the date of the invoice. That is the date that the products were delivered to the ship. The testimony of Major Evans shows that of 55 cases of eggs, 41 bore the stamp of the Department of Agriculture—no, it was not Evans. It was Colonel Hand—41 cases bore the stamp on the Department of Agriculture; 14 were unmarked, unstamped, rather, and among these unstamped cases were found several of these Pullet cards put in there by the candlers, and those are in evidence as Exhibits 39 and 40. Besides that, it appears in this case, as in all the other cases where these little eggs appear, that the green label of Nye & Nissen appears on these [119] cases indicating in each instance that they are medium size eggs.

Now, one of those labels is in as Exhibit 47, and these Pullet cards are in evidence. So much for the Gilbert Hitchcock, Count 5.

Now, Count 6 relates to the delivery of eggs on the SS. Czechoslovakian Victory on May 3, 1944. This relates to 25 cases of Medium A eggs. Just

as in the previous instance these products were delivered by Nystrom. I will have something to say about Nystrom hereafter. Of 25 cases of Medium A eggs, as they were invoiced to the Government, Major Evans found from the examination two days later on the steamship that they were no grade because of Rots, but aside from the Rots and disregarding the Rots he graded them as a B Small, and they were invoiced to the Government as Medium A, and none of these cases bore the Department of Agriculture stamp.

However, one of the exhibits that the defendants put in in this case has the Reid certificate showing that he had examined those eggs, graded them and found them AA Mediums and, of course, they should have been stamped with his stamp. These cases bore no stamp. So, obviously, they were not the eggs examined by Inspector Reid.

Now, the last of these substantive counts is the seventh count of the indictment and relates to the delivery of eggs to the SS. Henry White on May 1, 50 cases of Medium Processed AA [120]eggs. That is the way they were invoiced to the Government. Nystrom brought them to the ship, having received the eggs through the instrumentality of both Berman and Goddard. An examination of these eggs on the steamship by Colonel Hand and Special Agent Johnson showed that of these 50 cases 41 were stamped with the Department of Agriculture stamp, 9 cases were very light, some of them Peewees, and there were three Peewee cards found in the cases themselves; those Peewee cards are in as

Exhibits 36, 37 and 38. There was no certificate by any Department of Agriculture officer in connection with this shipment. I think it is unnecessary to go any further into the allegations and the proof as far as these substantive counts are concerned except to say this: They are all alike in all their features; the indictment alleges as to each one that Nye & Nissen and these other defendants presented to the Government a false claim in each case.

Now, what is the responsibility of the other defendants than Berman and Goddard in connection with these particular counts? It is this: As far as the corporation is concerned, as was said to you yesterday by Mr. Houck, a corporation can act only through its officers and representatives. The pattern of this company's business was dictated by Abraham Moncharsh. There cannot be any question of that.

As far as Menges is concerned, his duties related to the candling room. He was there for years and years. He knew the [121] manner in which this business was being conducted in an improper way. He knew that Small eggs, Peewee eggs, cases of them were put over by Ruby Goddard's office. He knew the manner in which business was being conducted in that concern, and the law is that anyone who aids and abets the commission of an offense becomes a principal and is equally liable with any who actually perform the unlawful acts. Monchársh is criminally responsible because he aids and abets everything that went on in that plant. He knew the pattern. He knew the course of conduct that was pursued, and the same is true of

Menges. That is all I am going to say about those substantive counts.

I have not nearly enough time to cover even the high spots of this case. Mr. Houck did a fine job, I thought, yesterday, in outlining the Government's evidence, and there are just a few things that I can touch upon. Among other things, I want to talk to you about these cheese records. It appears very clear, and you will remember, I have no doubt, that I asked the defense to produce the records of the sales, the inter-company sales from Nye & Nissen to the City Sales Division, and they produced them, and then I also asked them to produce the same records, these so-called hand tags, which represent the sale by City Sales to the Government agencies, and these appear in the record of the case.

I am going to read to you very briefly from this record [122] and demonstrate a course of fraudulent conduct in connection with the affairs of this company and its business that seems to me is very, very significant. This is Mr. Goddard on the witness stand and he was handed these slips, or these hand tags, whatever you call them, indicating a sale of Cheddar Loaf cheese, and I asked him to give in succession the weights of cheese as they were invoiced, if that is the proper expression, from Nye & Nissen to the City Sales Division, and it goes on in the preliminary part, which I won't read except this is my statement:

> "There has been some testimony on this subject—I think it was by Mr. Magee—that these are original records of the company produced

at our demand and they are in the handwriting of the witness, and I would like to have him examine them in connection with a statement that he made, both on direct and cross-examination: that the weight of Cheddard cheese boxes varied from about 24 pounds to slightly over 30 pounds."

Then it goes on and this question is asked, question by me to Mr. Goddard:

"Q. We will take the first of these. Do you find any item of Cheddar Loaf cheese on the first of those bills? A. No.

"Q. You say there is none on that first page?

"A. Not of Loaf cheese. [123]

"Q. All right, take the second one. Is there any Cheddar Loaf cheese on the second one?

"A. Thirty cases of Cheddar Loaf, 762 pounds.

"Q. How much is that per box?

"The Witness: Cheddar Loaf cheese will run in all different weights. You may have quite a few boxes of a light weight and a few boxes of heavy weight in the same load. Unless you have each box itemized on the invoice, there is no way of showing what that cheese averaged.

"Mr. Pratt: Q. You know what they averaged by dividing——

"A. No, you may have some 30-pound packages in that delivery, you may have some 29-pound packages in that delivery.

"Q. What is the average weight per case of those thirty cases?

"A. 99h, around twenty-five and a half pounds.

"Q. Do you find Cheddar Loaf cheese on the next one, dated April 3, 1944? A. No, sir.

"Q. Take the next one. Is there Cheddar Loaf cheese on that one? A. Yes, sir.

"Q. How many cases? A. Two cases.

"Q. The total weight?

"A. 52 pounds. [124]

"Q. That is 26 pounds apiece on the average?

"A. If they come that way."

Then further on:

"Q. Will you take the next one, the next of those invoices that shows Cheddar Loaf cheese?

"A. Four cases of Cheddar Loaf cheese, 101 pounds.

"Q. What is the next one?

"A. Six cases of Loaf cheese, 159 pounds.

"Q. And what is the next one?

"A. Five cases of Loaf cheese, 125 pounds.

"Q. That is just 25 pounds each, is it not?

"A. If you divide it by that number.

"Q. And the next one?

"A. Two cases of Loaf cheese—six cases of Cheddar Loaf, 155 pounds.

"Q. And the next one?

"A. Four cases of Loaf cheese, 106 pounds."

From that whole line of testimony, you will recall that they averaged something around 25 or 26 pounds.

Then Mr. Berman was called back to the stand with similar invoices or hand tags for sales to the Government. Here is the examination:

"Q. Mr. Berman, I show you these papers which have been produced upon request of the Government by Mr. Faulkner. Those are in your handwriting, are they not? [125]

"A. With the exception of these two that are typewritten—these three. However, they are boats that I take care of, and doubtless the handtags are in my handwriting".

Then it goes on, I asked him:

"Q. Does the first of those indicate Cheddar cheese? A. Yes, it does.

"Q. In what quantity? A. Three cases.

"Q. What weight?

"A. Ninety pounds net weight.

"Q. Will you go through and give the amounts, the number of cases of Cheddar Loaf cheese, with the number of pounds, charged to the War Shipping Administration, as you go through them?

"A. 22 cases of Loaf cheese, 660 pounds; 3 cases of Cheddar cheese, 90 pounds—this is all Loaf, Mr. Pratt—1 case of Cheddar Loaf cheese, 30 pounds; 3 cases of Cheddar Loaf cheese, 90 pounds; 1 case of Cheddar Loaf cheese, 30 pounds, none on this; none on that; 3 cases of Cheddar Loaf cheese, 90 pounds; 5 cases of Cheddar Loaf cheese, 150 pounds; 5 cases of Cheddar Loaf cheese, 150 pounds; no Loaf cheese; no Loaf cheese; 2 cases of Cheddar Loaf, 60 pounds; 1 case Cheddar Loaf, 30 pounds; no Loaf cheese; no Loaf cheese; no Loaf Cheese; no Loaf cheese; no Loaf cheese; 3 cases of Cheddar Loaf, 90 [126] pounds; no Loaf cheese; 1 case of Cheddar Loaf, 30 pounds; 1 case

of Cheddar Loaf, 30 pounds; no Loaf cheese; no Loaf cheese; 1 case, 30 pounds, none there; 5 cases of Loaf cheese, 160 pounds; 1 case, 30 pounds".

So every last one of them when invoiced to the Government is 30 pounds apiece.

Now, it is perfectly obvious that there was a deliberate, premediated plan to defraud the Government out of the difference between what they weighed and 30 pounds; and the average weight was always less than 30 pounds.

Now, just a few minutes with the William S. Clark episode. The Clark, as you all know, was here in San Francisco and then it went down to Long Beach and it was found that the eggs were just terrible; they were rotten eggs, that's all, and so the Government showed where those eggs came from. They were invoiced to the Government as Medium Processed AA eggs. The evidence showed that the Government showed that eggs in cases came from Minnesota and Los Angeles, a lot of eggs, and among others there were 105 cases that were put in storage there about the first of February, 1943, and they were given a lot number at the storage place of 3737. Every case bore that number and the cases bore the name of Nye & Nissen on them. The evidence shows that those 105 cases at the instance of the defendant Moncharsh were shipped from Los Angeles up here along about the 14th or 15th of October after they had been in storage [127] since February. They came up here a day or two later. Those boxes were put on the SS William S. Clark and it developed as they were

[illegible] used by the cook on the boat that they were just terrible eggs, rotten eggs. Whether they had whiskers on them and why the whiskers were there as testified by the colored cook, or whether they were just rotten and smelled terrible, as he testified, the evidence is before you and you know what those eggs were; yet they were invoiced to the Government as AA Medium Processed eggs.

There was trouble down there. Complaint was made at that time down in Long Beach and a lot of people went out to look at them. They all agreed on one thing, they were not processed, which, of course, you know means an oil film put on them to preserve them as eggs almost uniformly are that have been in storage, but they were not even processed eggs, they were not processd to protect them in storage, and the testimony is clear that those eggs were so bad that most of them were not fit for the character of consumption intended on the steamship, and, for that matter, many of them were entirely inedible. Finally, there in Los Angeles it was agreed that the eggs should be recandled and reconditioned. I think they used that expression, it was found that of the 40 cases that were taken off the boat, the whole order originally was for 15 cases, that is what the Government was invoiced for, but *when* they got down to Los Angeles they took off the boat those that were left, and [128] there were 10 full cases and a part of another case, and those eggs were then candled and four or five cases, I think four plus cases were found to be inedible, not fit for any use, [illegible] after

candling the whole lot, four plus cases were found to be rotten and no good and those eggs were then put in the incinerator at Los Angeles, and the remaining eggs which, of course, had a very low grade, were sent back here to San Francisco, 36 cases, and when it came to giving a credit memorandum to the ship owner or to the Government, what did Nye & Nissen do? They gave a credit memorandum for just the 36 cases that came back here. Did they give a credit memorandum for those that went into the incinerator or those that had to be thrown overboard from the boat? They did not. They defrauded the Government right then and there in giving this credit memorandum for 36 cases when it should have been 45 cases.

But those eggs and that transaction speak out as loudly as anything could of the character of business these people were doing and it corroborates everybody in this case, Pineda and Andrade and everybody else, the girls who testified about a course of procedure that was followed in that plant. So much for the William S. Clark.

I want to say just a few words about the defense in this case and I have to hurry along because I don't want to go beyond my time. The defense in this case is largely one of denial; [120] generally an emphatic denial. You remember in connection with the episode of the SS. Bates Mr. Faulkner said: "I have no doubt Mr. Pratt will read that letter", and I am going to do it. I think you recall the manner in which this occurred in the first place. I asked Mr. Monghatsy about a statement he had

made that he had had no other complaint of eggs from the War Shipping Administration and he had said, no, he had received no other complaints except the one relating to the William S. Clark. Mr. Faulkner tried to restrict the question to the period from the 24th of April to the 17th of May, I think, but Moncharsh went beyond it. Of his own volition he said he had received no complaints about deliveries of eggs to the War Shipping Administration except the Clark. Well, this is the record:

> "You were asked by him"—that is, by Mr. Faulkner—"whether you received or there came to your attention during the period April 24 until May 13 any complaint of any kind, character or description from any steamship company in relation to delivery of merchandise between April 24 and May 13, and you answered, 'I do not ever remember a complaint from a steamship company with the exception of the William S. Clark,' and I take it that you mean by that that the complaint that came to you from the officer of the American President Lines in regard to the Clark was the only complaint that you received, or that [1130] came to your attention in regard to eggs or produce delivered for the War Shipping Administration boat; is that right?"

Then there was some objection, but finally the witness was permitted to answer the question:

> "A. As far as I can remember, yes.
>
> "Q. That is to say, any complaint relating

to the delivery of eggs or other produce to the ships of the War Shipping Administration; is that right? A. That is right."

Then I spoke of an instance concerning the Royce. He didn't know about that. Then I asked this question:

"Q. Didn't there come to your attention a complaint in regard to eggs delivered on the SS. Edward Bates, a ship owned or controlled by the War Shipping Administration?

"A. I never even heard of the name of that boat.

"Q. You never heard of the name of that boat? A. No, sir.

"Now, I hand you a letter——"

I handed him a letter which was this letter, this is Exhibit 179, and I read it. Here is the letter, addressed to:

"Nye & Nissen,
1301 - 17th Street
San Francisco, California

Attention: Mr. Berman [131]

Subject: Rotten Eggs SS Edward Bates

On March 13, 1943, we purchased from you 45 cases of processed eggs for the subject vessel.

We received a report from the chief steward which I would like to quote in part for your information.

April 4—Eggs are not good enough. Eggs do

not hold together, and it is almost impossible to serve straight-up.

May 3—One case dumped today. Some had embryonic chickens inside.

May 11—Eggs are still being dumped. Every other one rotten.

May 19—2nd cook broke 20 eggs this morning obtaining one good one.

May 24—Will have to dump remainder of eggs (10 cases) before reaching port; all were rotten."

By the way, the complaint was made by Mr. Faulkner a few minutes ago, why didn't the Government have the eggs here? Why, the eggs that were bad were dumped overboard and could not very well have been brought in, and the question itself which Mr. Faulkner raised was itself the height of absurdity. The letter continues:

"You will note from the above that the eggs were reported practically unfit for use only 20 days after receiving same. It is apparent from the above steward's [132] report that we received a shipment of spoiled eggs and as a consequence the ship had to make the last two or three weeks of its voyage without any eggs whatsoever.

The results are obvious, that is, the cooks were unable to do any pastry baking and many types of menus were impossible to make.

Our investigation develops that out of the total of 45 cases of eggs purchased, at a cost of $587.25, we were only able to use 15 cases. We, therefore, request a refund from you of the value of 30 cases, viz. $391.50. Please give this matter your immediate attention.

Yours very truly,

UNITED STATES OF AMERICA

WAR SHIPPING ADMINSTRATION

By: HAMMOND SHIPPING CO., LTD."

I want to digress just a moment. These eggs had been on the boat since March 13 and it was suggested by Mr. Faulkner that so much time had elapsed that this complaint was not worth anything, any way, because eggs shipped on these boats were all bad after a few months, and eggs were put on those boats for the consumption of the men, or the crew or whoever was on the boats, and were intended to last for just the duration of the trip, and the eggs will last, as demonstrated particularly in the case of the Hawaiian Shipper of which so much has been said. There were 400 cases of eggs that made up the order and some [133] eggs were left on board when this new order of 400 cases of eggs came on for the next voyage, and the first eggs that were used when they left port here were the remains of the old eggs that had been out in

the Pacific and back, and those eggs were all right, but when they started using the eggs from this new order as these men from the Hawaiian Shipper testified, the steward and the chief baker and the chief cook, they were terrible; they were rotten, and, oh, well, beyond description. So it is perfectly obvious that the selection of eggs was all right; the eggs for the previous voyage had gone out and had come back all right and, incidentally, they were Nye & Nissen eggs, but this 400-case order were just no good and the conclusion is perfectly obvious that those were eggs that had been shipped around and the inspectors deceived by all these tricks and schemes and devices used by these people in connection with these transactions had been used in connection with those eggs on the Hawaiian Shipper. That is digressing from these letters. These letters in regard to the Bates. After I read the letter and he answered, he still said that he knew nothing about it, or knew nothing of the Bates, then I read him another letter, and that letter is dated September 15, and it refers to the former one of June 30. They want to know what has transpired. Then Moncharsh writes a letter, a long, long letter, telling about how eggs are handled and how they are obtained and what happens in the course of their handling and makes a lot of [1134] excuses and then ends up by saying that they will give them a credit memorandum for five cases and they were asking for forty-five. At all events, of course, he then had to admit that, yes, he had written that letter. Still he said he had never seen the previous

correspondence. Then I called his attention to the quotation that he has in here from the original letter of June 30. Well, he struggled and he struggled and he had a terrible few minutes in connection with the letter. The reason I am calling that to your attention is that it absolutely impeaches the credibility of Mr. Moncharsh and in the face of that and considering further his interest in this case, you just can't believe anything he says.

Now, there is further impeachment, but there is no use; I haven't time to go into all of it. Menges, I don't know whether you remember in one place Menges said in answer to a question by Mr. Faulkner about cut-outs, he said he didn't know the term; he said he didn't know the term. Nevertheless, Pinela had talked about cut-outs and cut-outs and cut-outs and described cut-outs as eggs that were put into a case from some other case because they were rejected, not what they were candling eggs for; they were inferior eggs, but Menges said he never heard the term. Nevertheless, a little bit later a few days later when Mr. Goddard was testifying all of a sudden it popped out of his mouth, using the word "cut-out." It is perfectly obvious from that, if from nothing else, that Menges' credibility is of [135] a very low degree. Furthermore, you will remember the impeachment of Menges by these girls. They came in here and testified, all of them, that Menges, they had received orders time and time and time again from Menges to switch eggs, transfer eggs from cases that had the Government stamp on to other cases [illegible]

removing the stamp; that is putting other eggs into the stamped cases. I might go on and on and on, ladies and gentlemen. This whole case reeks with a disgraceful history of corruption in connection with the conduct of this business. It has been demonstrated time and time again and a pattern of corruptness was instituted by the president of this concern and that one after another employee came into it and the girls, he corrupted them all, he got them all to doing corrupt things; the girls were doing corrupt things; Pineda was doing corrupt things. What is there to say for a man who adopts such a course of business and operates it in a fraudulent way and at the same time carries on this corrupt influence to the younger people in his organization? If anybody is to be condemned that man emphatically is.

Now, I have some notes here about what I [135] say to you, ladies and gentlemen—I don't want to detain you, I am going to close, but I simply want to say to you that there is nothing more to say except to call your attention to the responsibility which we all have in this case. We all have a responsibility. The defense counsel has a tremendous responsibility. The [136] Government has a great responsibility in presenting this case to you. Why, we have been charged with withholding evidence; we have been charged with corruptness, certainly by Mr. Sullivan, and these FBI men whom I think are two of the most splendid men I have ever seen connected with the Government, they are charged with perpetrating a fraud on these defendants and

at the same time, of course, that would be a fraud upon you, but you are the judges of the credibility of witnesses, you are the judges of whom is to be believed in this case. There is no question of passion or prejudice. Why, we would not be permitted as Government attorneys to appeal to any passion or prejudice. All we are doing is laying the facts before you as we have been able to do and we leave the result to you in the light of the Court's charge, and I am sorry that I have taken so much time, but it is now up to you.

The Court: Ladies and gentlemen, we will adjourn until 9:30 o'clock tomorrow morning.

(The case was then continued until Saturday, April 6, 1946, at which time the instructions were read to the Jury by the Court.)

CERTIFICATE OF REPORTER

I, Kenneth G. Gagan, Official Reporter, certify that the foregoing 137 pages is a true and correct transcript of the matter therein contained as reported by me and thereafter reduced to typewriting, to the best of my ability. [137]

[Title of District Court and Cause.]

CERTIFICATE OF CLERK TO REPORTER'S TRANSCRIPT

I, C. W. Calbreath, Clerk of the District Court of the United States for the Northern District of

California, do hereby certify that the following Reporter's Transcript for April 4, 1946, and April 5, 1946 Transcript of Argument to the Jury was filed in the above-entitled case; and constitutes the Supplement to Record on Appeal, and the Order of Court is herewith forwarded to the United States Circuit Court of Appeals for the Ninth Circuit to be considered by it as part of the Record on Appeal herein.

Witness my hand and seal of the District Court of the United States for the Northern District of California, this 5th day of February, 1947.

[Seal] C. W. CALBREATH,
Clerk.

By /s/ M. E. VANBUREN,
Deputy Clerk.

[Endorsed]: No. 11308. United States Circuit Court of Appeals for the Ninth Circuit. Nye & Nissen, a Corporation, and Abraham Honeharsh, Appellants, vs. United States of America, Appellee. Supplemental Transcript of Record. Upon Appeal from the District Court of the United States for the Northern District of California, Southern Division.

Filed February 7, 1947.

/s/ PAUL P. O'BRIEN,
Clerk of the United States Circuit Court of Appeals for the Ninth Circuit.

United States Circuit Court of Appeals
for the Ninth Circuit
No. 11308

NYE & NISSEN, a Corporation, and ABRAHAM MONCHARSH,

Appellants,

vs.

UNITED STATES OF AMERICA,

Appellee.

STIPULATION THAT TRANSCRIPT OF RECORD MAY BE SUPPLEMENTED

Whereas, the Appellants herein deem the argument of counsel to the jury in the trial of the above-entitled matter material to the appeal herein and the issues raised thereby; and

Whereas, the transcript of the arguments of counsel to the jury was omitted from the record on appeal by accident.

Now, Therefore, It Is Hereby Stipulated between Appellants herein and Appellee that the transcript of record upon the appeal herein may be supplemented by

(a) The Reporter's Transcript of the argument to the jury made by counsel for Appellants and Appellee in the trial of the above-entitled cause in the District Court of the United States for the

Northern District of California, Southern Division, on April 4 and April 5, 1946, and

(b) Stipulation that Transcript of Record may be supplemented.

Dated February 5th, 1947.

/s/ JOSEPH B. KEENAN,

/s/ HAROLD C. FAULKNER,

MALONE and SULLIVAN,

Attorneys for Appellants.

/s/ THERON L. CANDLE,

/s/ D. WENDELL REID,

Attorneys for Appellee.

So ordered:

/s/ FRANCIS A. GARRECHT,

/s/ WILLIAM DENMAN,

/s/ WM. HEALY,

United States Circuit Judges.